

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**JASON COOKSEY, HEIDI COOKSEY AND
SARAH COOKSEY, SYDNEY COOKSEY AND
SADIE COOKSEY, MINORS, BY AND
THROUGH THEIR NATURAL GUARDIANS,
JASON AND HEIDI COOKSEY**

PLAINTIFFS

V.

CAUSE NO. 1:18-cv49-LG-RHW

**HUNT SOUTHERN GROUP, LLC FKA
FOREST CITY SOUTHERN GROUP, LLC,
FOREST CITY RESIDENTIAL MANAGEMENT, LLC,
HUNT MH PROPERTY MANAGEMENT LLC,
UNKNOWN JOHN AND JANE DOES A THROUGH M, AND
OTHER UNKNOWN CORPORATE ENTITIES N THROUGH Z**

DEFENDANTS

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT – ATTORNEY'S FEES APPROPRIATE REMEDY
UNDER SERVICEMEMBER'S CIVIL RELIEF ACT (SCRA)**

COME NOW Plaintiffs, by and through their counsel of record, Rushing & Guice, P.L.L.C., and file this Memorandum in Support of Motion for Partial Summary Judgment – Attorney's Fees Appropriate Remedy Under Servicemember's Civil Relief Act (SCRA), and would show this honorable Court as follows:

1. Rule 56(a) of the Federal Rules of Civil procedure provides that summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). To rebut a properly supported motion for summary judgment, the opposing party must show, with "significant probative evidence," that there exists a genuine issue of material fact. *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000).

2. The SCRA, enacted in 2003 and amended several times since then, revised and expanded

the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on servicemembers during periods of military service. See 50 U.S.C. §§ 3901-4043. The SCRA is a federal law that provides protections for military members as they enter active duty. It covers issues such as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance and income tax payments.

3. On October 13, 2010, the Veterans' Benefits Act of 2010 was signed into law, amending the SCRA to expressly permit a private right of action for monetary damages, and to allow prevailing plaintiffs to recover litigation costs, including reasonable attorney's fees.

4. The location of the SCRA within the United States Code changed in late 2015. Previously found at (codified and cited as) 50 U.S.C. App. §§ 501-597b, there was an editorial reclassification of the SCRA by the Office of the Law Revision Counsel of the United States House of Representatives that became effective on December 1, 2015. The SCRA is now found at (codified as) 50 U.S.C. §§ 3901-4043.

5. 50 U.S.C. §4042 speaks to a private right of action and the recovery of attorney's fees:

(a) In general. Any person aggrieved by a violation of this Act [50 U.S.C. App. §§501 et seq.] may in a civil action –

(1) obtain any appropriate equitable or declaratory relief with respect to the violation;

and

(2) recover all other appropriate relief, including monetary damages.

(b) Costs and attorney's fees. The court may award to a person aggrieved by a violation of this Act who prevails in an action brought under subsection (a) the costs of the action, including a

reasonable attorney fee.

6. Plaintiffs allege a violation of § 3951 of the SCRA which provides that except by court order, a landlord (or another person with paramount title) may not—

(A) evict a servicemember, or the dependents of a servicemember, during a period of military service of the servicemember, from premises—

(i) that are occupied or intended to be occupied primarily as a residence; and

(ii) for which the monthly rent does not exceed \$2,400, as adjusted under paragraph (2) for years after 2003; or

(B) subject such premises to a distress during the period of military service.

7. The stated purpose of the SCRA is twofold: (1) to "enable [servicemembers] to devote their entire energy to the defense needs of the Nation," and (2) to "provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service." 50 U.S.C. § 3902. Parties aggrieved by violations of § 3953 or other portions of the SCRA may bring a private right of action to recover equitable or declaratory relief, monetary damages, and costs, including attorney fees. *McGreevey v. PHH Mortg. Corp.*, No. 3:16-cv-05339-RJB (W.D. Wash., 2016).

8. The SCRA authorizes both a private right of action and attorney's fees in this case should Plaintiffs be successful in their SCRA claim.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request this Court grant Plaintiffs' Motion for Partial Summary Judgment and find that attorney's fees are an appropriate remedy as a matter of law.

Respectfully submitted this the 10th day of May, 2019.

RUSHING & GUICE, P.L.L.C.
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system which sent notification of such filing to all counsel of record.

SO CERTIFIED this the 10th day of May, 2019.

/s/ Maria Martinez
MARIA MARTINEZ